

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36272]

The Gregory B. Cundiff Trust, the Connie Cundiff Trust, CGX, Inc., and Ironhorse Resources, Inc.—Continuance in Control Exemption—Tennessee Railroad Holdings, LLC, Sequatchie Valley Switching Company, LLC, and Walking Horse Railroad, LLC

The Gregory B. Cundiff Trust, the Connie Cundiff Trust, CGX, Inc. (CGX), and Ironhorse Resources, Inc. (Ironhorse) (collectively, the Controlling Entities), have filed a verified notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(2) to continue in control of Tennessee Railroad Holdings, LLC (TRH), Sequatchie Valley Switching Company, LLC (SQSC), and Walking Horse Railroad, LLC (WHRR) when TRH, SQSC, and WHRR become rail carriers.¹

The transaction is related to three concurrently filed verified notices of exemption. In Tennessee Railroad Holdings, LLC—Acquisition Exemption—Sequatchie Valley Railroad, Inc., Docket No. FD 36269, TRH seeks an exemption under 49 C.F.R. § 1150.31 to acquire by purchase from Sequatchie Valley Railroad, Inc., a line of railroad that extends between milepost 0.0, a point of connection to CSX Transportation, Inc. (CSXT) at or near Bridgeport, Jackson County, Ala., and milepost 11.77, the end of track at or near Jaspar, Marion County, Tenn. (the Line). In Sequatchie Valley Switching

¹ The verified notice was supplemented on March 1, 2019, with a letter indicating that the proposed transaction does not involve any interchange commitments.

Co.—Operation Exemption—Tennessee Railroad Holdings, LLC, Docket No. FD 36270, SQSC seeks an exemption under 49 C.F.R. § 1150.31 to operate over the Line pursuant to an operating agreement with TRH. In Walking Horse Railroad, LLC—Change in Operators Exemption—Walking Horse & Eastern Railroad Co., Docket No. FD 36271, WHRR seeks an exemption under 49 C.F.R. § 1150.31 to replace Walking Horse and Eastern Railroad Company, Inc., as the operator of a rail line that extends between milepost 0.0, a point of connection to CSXT at or near Wartrace, and milepost 7.9, the end of track at or near Shelbyville, in Bedford County, Tenn.

The earliest this transaction may be consummated is March 27, 2019, the effective date of the exemption (30 days after the verified notice was filed).

According to the verified notice of exemption, the Gregory B. Cundiff Trust and the Connie Cundiff Trust, both of which are noncarrier individual trusts, own CGX, a noncarrier holding company, in equal parts. CGX, in turn, directly controls a number of existing Class III carriers and Ironhorse, a noncarrier holding company. As a result of this transaction, CGX would directly control TRH (which is currently a noncarrier). Ironhorse directly controls several existing Class III rail carriers. As a result of this transaction, Ironhorse would directly control SQSC and WHRR (which are currently noncarriers).

The Controlling Entities represent that: (1) the rail lines to be owned by TRH, the lines to be operated SQSC and WHRR, and the properties of the rail carriers controlled by the Controlling Entities do not connect with each other; (2) the proposed continuance

in control is not part of a series of anticipated transactions that would connect the carriers with each other or any other railroad in the corporate family; and (3) the transaction does not involve a Class I carrier. The proposed transaction is, therefore, exempt from the prior approval requirements of 49 U.S.C. § 11323 pursuant to 49 C.F.R. § 1180.2(d)(2).

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. § 11326(c) does not provide for labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all the carriers involved are Class III carriers.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than March 20, 2019 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36272, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1666, Chicago, IL 60604-1228.

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Board decisions and notices are available at www.stb.gov.

Decided: March 8, 2019.

By the Board, Allison C. Davis, Acting Director, Office of Proceedings.